

**MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING**

September 7, 2018

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 7, 2018, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Senator Warren Daniel, Louise Davis, Danielle Elder, Judge Robert Ervin, Representative John Faircloth, Chris Fialko, Willis Fowler, Chief Tammy Hooper, Judge Thomas Jarrell, Susan Katzenelson, Representative Allen McNeill, Luther Moore, Judge Fred Morrison, the Honorable Thomas Thompson, Jim Toms, Judge Reuben Young, and Judge Valerie Zachary.

Guests: Emily Mehta (AOC-Communications), Graham Atkinson on behalf of Willis Fowler (DPS-PRSPC), Tracy Little (DPS), Sarah Llaguno (DPS-Combined Records), Jennifer Bedford (NCGA), Melinda Stevens (NCSA), Kris Parks (NCAJ), Mary Pollard (NCPLS), Onyea Ubom (NCCU), D’Niesha Sudduth (NCCU), and Enday Bong (NCCU).

Staff: Michelle Hall, John Madler, Ginny Hevener, Tamara Flinchum, Meghan Boyd Ward, Rebecca Dial, John King, Jennifer Wesoloski, Becky Whitaker, and Shelley Kirk.

INTRODUCTION AND RECOGNITION OF NEW COMMISSIONERS

Chairman Brown called the meeting to order at 10:04 a.m. He asked for a moment of silence to remember Ms. Gwen Norville of DPS who passed away a year ago.

Chairman Brown introduced the newest Commissioner, Judge H. Thomas Jarrell, representing the NC District Court Judges’ Association and replacing Judge Keith Gregory who was recently appointed as a Superior Court Judge.

Chairman Brown presented the minutes from the June 8, 2018, Sentencing Commission meeting. Luther Moore moved to adopt the minutes as presented; the motion was seconded and carried.

Members and guests introduced themselves. Chairman Brown provided the 2019 Sentencing Commission meeting dates (March 1, June 7, September 13, and December 6, 2019) and then reviewed the agenda for the meeting.

LEGISLATIVE SESSION SUMMARY AND IMPACT

Chairman Brown recognized John Madler and Ginny Hevener, staff, to review the 2018 legislative session and its impact on the prison population (see Handout). Mr. Madler began by informing the members that the General Assembly had adjourned June 29, 2018, but that it was scheduled to reconvene on November 27. Based on the session that ended June 29, staff compiled a report on the criminal and juvenile justice bills that were ratified during the 2018 Session. Staff also created a table showing the new offenses, reclassified offenses, and punishment changes that occurred during the Session by offense class (see Handout). Staff thought this table would provide a better picture of the overall impact of the Session than looking at individual offenses in isolation. Mr. Madler then reviewed the changes in felony Classes A

through E. He pointed out that, as is usually the case, there were very few changes in those classes and the changes primarily involved adding a new element to an existing offense. He reviewed some of the changes.

Ms. Hevener informed the Commissioners that, in addition to the overall mandate to provide resource projections for correctional and delinquent populations, the Sentencing Commission is legislatively mandated to provide impact projections for each bill that affects criminal penalties or juvenile justice. These mandates are linked to the principle of Structured Sentencing that sentencing policies should be balanced with correctional resources. Ms. Hevener noted that the impact of a proposed change primarily depends on the number of convictions/adjudications involved and their offense class.

Ms. Hevener stated that impact on the prison population occurs for Class A through E felony offenses with a single conviction due to the active sentence requirement in almost every cell and that convictions stack up over time due to the length of the sentences imposed. However, Class A through E felony offenses accounted for only 14% of felony convictions last year. While the impact from these bills will depend on the volume of convictions affected, several of the changes relate to conduct already covered under existing statutes and are not expected to result in additional convictions.

Turning to felony Classes F through I, Mr. Madler pointed out that there were more changes than in the higher classes but that they also primarily involved adding a new element to an existing offense; he reviewed some of the changes. Mr. Madler explained that the punishment change to the malicious conduct by prisoner offense requires that subsequent convictions for violations of Article 33 of Chapter 14 of the General Statutes be run consecutive to sentences for violations of the malicious conduct by prisoner offense but it does not require sentences for the malicious conduct by prisoner offense be run consecutive to the offender's original sentence.

Ms. Hevener noted that Class F through I felony offenses impact the prison population through the high volume of convictions (accounting for 86% of felony convictions last year). These offenses are less likely to receive an active sentence and have shorter sentence lengths; however, they can also affect the prison population through revocations of probation for a new crime or absconding. Again, the impact will depend on the volume of convictions affected; however, most of the changes have limited applicability and would not be expected to result in substantial impact to the prison population. Commission members discussed the potential impact of House Bill 969 (Enhance Prison Security). Ms. Hevener indicated that last year there were 100 convictions for malicious conduct by prisoner (Class F), 33 convictions for possession of a dangerous weapon in prison (Class H), and 1 conviction for possession of a mobile phone (Class H). It is possible that the current focus on prison security could result in changes to the volume of convictions under existing laws, as well as conduct covered by the new law. She stated that House Bill 969 and House Bill 670 (Protect Educational Property) could also impact the juvenile justice system.

For misdemeanor offenses, Mr. Madler informed the members that there were no changes in Class A1 and that the other changes applied to offenses that generally involved licenses or permits, thereby limiting the pool of potential offenders. Ms. Hevener informed the members that legislative changes to misdemeanor offenses no longer impact the prison population because all misdemeanants serve any active sentences in the local jails directly or through the Statewide Misdemeanant Confinement Program.

Mr. Madler highlighted two bills of interest: House Bill 379 and Senate Bill 162. House Bill 379, Recodification Working Group, requires various entities to compile lists of current criminal offenses in the General Statutes, the Administrative Code, and local ordinances and to submit the lists to the Joint Legislative Administrative Procedure Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2019. Mr. Madler stated that this requirement is similar to a previous bill that would have established the Criminal Code Recodification Commission but that this bill does not state what the Committees will do with the lists once they are compiled and submitted. Senate Bill 162, Human Trafficking Restorative Justice, includes a directive for the Human Trafficking Commission, in consultation with the Conference of District Attorneys and the Office of Indigent Defense Services, to study the human trafficking offenses in Article 10A of Chapter 14 of the General Statutes. The Commission is to consider the appropriate level of sentencing for each offense, whether any revisions to the sentencing levels would reduce human trafficking, and the effects of expanding the eligibility of any post-conviction relief to human trafficking victims. The Commission is directed to submit its report to the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2019. Mr. Madler informed the Commission that staff had met with the staff of the Human Trafficking Commission and offered any assistance the Sentencing Commission could provide.

Finally, Mr. Madler stated that the General Assembly passed Senate Bill 99, the budget bill, in June and that the Commission reviewed the relevant provisions at its June meeting. He reminded the members of the study mandates given to the Sentencing Commission in that bill: to study the most effective setting to house and provide appropriate treatment services for DWI Aggravated Level One and Level One offenders, to develop projections of available bed space in the Statewide Misdemeanant Confinement Program (SMCP), and to study the feasibility of developing five-year population projections for the SMCP. Mr. Madler explained that Michelle Hall would provide an update on the progress of those studies later in the meeting.

CORRECTIONAL PROPULATION PROJECTION UPDATES

Ms. Flinchum provided an update on the long-term projections for correctional (i.e., prison) population that are produced on an annual basis with the Department of Public Safety (see handout). She began with an update on the prison population, with a focus on the short-term and long-term accuracy of the projections. The current projection is on target in terms of short-term accuracy (i.e., the first projection year) – the average prison population for June 2018 was 36,161 compared to the projected population of 36,483 (within 1%). A conservative accuracy range of plus or minus 2% is used when assessing the accuracy of projections within the short-term. Looking at the projections historically, all but one of the past ten projections have been within the 2% accuracy range. The projection for FY 2010 over-projected by 4.5%, with the data representing the peak of felony convictions that preceded declines in criminal justice trends. An examination of the long-terms accuracy of the projections – focusing on all ten years of the individual projections – was also provided. Projections for FY 2013 to FY 2018 – the five years following JRA implementation – were within a 5% accuracy range compared to the actual prison population.

Mr. Fialko inquired if the accuracy of the projection would be affected by the 2020 US Census. Ms. Hevener replied that changes to North Carolina’s population will be taken into account with the growth rates applied to the model. The growth rates are determined by the Forecasting Technical Advisory Group who meets annually to discuss changes in population, criminal justice and juvenile justice trends, and other items that may affect the projections. Ms. Katzenelson asked what is driving the growth in the final years of the projection where the projected population exceeds capacity. Ms. Hevener responded

that the increase is primarily driven by the population growth. Representative Faircloth mentioned the overcrowding of prisons and what is an acceptable level and when should additional facilities be built. Ms. Flinchum responded that the Expanded Operating Capacity is used for prison capacity, while Ms. Hall mentioned that building new facilities is one option for handling overcrowding and that other policy options may also be available. Ms. Katzenelson shared that prison custody levels also impact prison capacity. Representative Faircloth followed with an additional inquiry regarding how temporary shifts in population (e.g., military deployments) affect the prison projections, and Ms. Hevener replied that the growth rates previously mentioned would consider those temporary shifts. Chairman Brown wondered if the Raise the Age legislation increasing the age of juvenile jurisdiction to include offenders aged 16 and 17 years would affect the prison projection. According to Ms. Hevener, those offenders tend to not receive active sentences in the adult criminal justice system and would have minimum impact on their exclusion from the adult prison projection. She concluded that the Raise the Age impact will be in the juvenile justice system.

Chairman Brown recognized John King to provide an update on the 5-year (i.e., FY 2018 through FY 2022) projection for the Youth Development Center (YDC) population (*see Handout*). Mr. King stated that, similar to the adult prison population projections, the Commission is mandated to project juvenile commitments to YDCs on an annual basis.

Mr. King noted that the YDC projection includes all adjudicated juveniles with a Level 3 disposition. Given the small population in YDCs (214 as of September 4) and that the numbers can fluctuate substantially over the course of the year, the accuracy of the juvenile projections is assessed by examining the projected population within the context of the lowest and highest YDC populations over the fiscal year. A projection is considered to be accurate if it is between those two numbers and, ideally, the projection should be closer to the highest population of the fiscal year. In examining the projections since FY 2012, the projected YDC population was typically within the range of the lowest and highest YDC populations for any given fiscal year. The projection for FY 2018 (184) was on the low end of the range for the year (with the lowest population of 175 and the highest population of 225).

Mr. King then shared two additional figures that help visualize the recent challenges of accurately projecting the YDC population. He noted that, from FY 2014 through FY 2016, the average monthly YDC population was relatively stable, remaining between 220 and 253 committed juveniles. However, FY 2017 was a year of significant decline in the YDC population. The challenge in projecting the FY 2018 YDC population was determining whether the population declines seen in FY 2017 would continue or whether the YDC population would rebound to levels closer to historical averages. Mr. King described the FY 2018 projection of 184 as a hedge against both scenarios, but ultimately the projection was quite lower than the maximum YDC population for the year (225).

Mr. King stated that staff had received the data needed to develop the FY 2019 projection and expected to be able to share that projection at the Commission's December meeting. Mr. Beeler commended and encouraged staff on the projection work, recognizing that the juvenile system is designed to be flexible and, as a result, can be unpredictable.

RESEARCH BRIEF: PRISON PROGRAMS AND RECIDIVISM

Chairman Brown recognized John King to present the findings from the Criminal Justice Outcomes for Prison Releases Assigned to Select Correctional Jobs and Programs research brief. The research brief is a follow-up to the Commission's 2018 adult recidivism report and includes analysis of prisoners'

assignments to correctional jobs/programs and recidivism following release. Mr. King reported that nearly two-thirds of prisoners released in FY 2015 were assigned to at least one job and one program during their incarceration. He also mentioned that opportunities for job and program assignment appeared related to sentence length, noting that Class H and I felony prisoners were least likely to be assigned to both jobs and programs and most likely to have only a job or program assignment. Class H and I felons were also the most likely to have neither a job nor a program assignment.

Mr. King further explained that the brief focuses on seven specific correctional jobs/programs. The jobs selected for analysis were Construction, Correction Enterprises, and Work Release; the programs selected for analysis were Academic Education, Alcohol and Chemical Dependency Programs (ACDP), Sex Offender Accountability and Responsibility (SOAR), and Vocational Education. Mr. King shared the percentage of prison releases that were assigned to each of these correctional jobs/programs during their incarceration. Of the jobs/programs examined, the greatest proportions of the prison release sample were assigned to Academic Education (44%) and Vocational Education (30%).

Next, Mr. King shared the results of the recidivism analysis for the selected correctional jobs/programs. He explained that recidivism was defined as either an arrest or an incarceration during a period of two years following release from prison. He noted that the recidivism rates for prisoners assigned to Academic Education and ACDP were similar to those for the prison release sample. The recidivism rates for prisoners assigned to Correction Enterprises and Vocational Education were slightly lower than the rates for the prison release sample. Finally, the recidivism rates for prisoners assigned to Construction, SOAR, and Work Release were lower compared to the prison release sample. Judge Ervin commented that the apparent effectiveness of Work Release programs compared to other programs needed to be considered in light of eligibility requirements for assignment to Work Release. Specifically, that Work Release may look more effective than other types of programs, but it may not be any more effective in light of the fact that it is only available to low risk offenders. Judge Jarrell added that information on the class and types of offenses that prisoners have been convicted of prior to participating in these jobs/program might provide interesting context to the recidivism rates. Ms. Hall mentioned that future studies may be able to incorporate prisoners' risk and need levels. Ms. Elder asked about whether there is a threshold for confidence in the recidivism rates for the SOAR program considering the small number of participants. Ms. Hevener replied that staff takes the small numbers into account and that participation in SOAR has been always been low. Judge Ervin added that perhaps the better comparison group for the SOAR program would be sex offenders who were not assigned to the SOAR program.

Mr. King shared the recidivism rates for the select correctional jobs/programs broken down by gender and noted that females have lower recidivism rates than males both overall and regardless of job and program assignment. Senator Daniel asked about whether the recidivist incarceration rate is a percentage of recidivist arrests. Ms. Hevener replied that the two measures are distinct and that a portion of the recidivist incarceration rates include prisoners who were incarcerated for failure on PRS rather than convicted of new crimes. Senator Daniel asked about whether staff has recidivism rates by offense class. Ms. Hevener said those rates are included in the adult recidivism report. Ms. Davis asked about whether staff knows how intensive the SOAR program is. Ms. Hall said staff could get that information.

Mr. King presented the findings of two new recidivism analyses: recidivism rates for select correctional jobs based on the length of job assignment and recidivism rates for select correctional programs based on offenders' outcomes in those programs (positive, neutral, negative). Rep. McNeill asked if staff considered multiple arrests in its recidivism arrest measure. Mr. King responded that one arrest during follow-up is treated the same as multiple arrests during follow-up. Mr. Beeler commented

that the description for Academic Education refers to opportunities for post-secondary education which no longer exist. He also mentioned that effective drug abuse programming takes 500 hours to be effective and that the current analyses do not address length of programming received. He also encouraged staff to consider adding race to this analysis to ensure that program opportunities are being assigned equally.

Mr. King closed by saying that the discovery of some answers provided in this particular brief has only raised more questions about evaluating correctional job/program effectiveness. While this year's brief built upon one staff produced in 2016, there are still many more areas ripe for exploration that staff would like to address in future analyses.

DWI SENTENCING SUBCOMMITTEE UPDATE

Chairman Brown recognized Becky Whitaker, staff, to provide Commission members with an update on the work of the DWI Sentencing Subcommittee. Ms. Whitaker told the members that the Subcommittee had met once since the June Commission meeting. She reminded the members that the decisions made by the Subcommittee are tentative at this point and may be revisited as they address subsequent issues.

Ms. Whitaker reminded members of the two study requests guiding the Subcommittee's work: to review sentence credit policies for DWI offenders, including good time and gain time, as compared with sentence credit policies for other offenders, and to study sentencing and correctional policies and practices for DWI offenses. From these two requests, the Subcommittee developed a set of working goals. Subcommittee members decided that DWI policies should be swift and certain, be truthful in sentencing, reduce recidivism, and enhance public safety. That set of goals is the basis for evaluating ideas and proposals as they come before the Subcommittee.

Early on, the Subcommittee decided that DWI offenses are different from other types of offenses and should therefore be treated differently. The Subcommittee decided that their initial approach would be to look at ways to amend existing DWI laws to meet their goals. The Subcommittee identified three primary areas for study: pretrial, sentencing, and post-conviction.

Ms. Whitaker explained the decisions made by the Subcommittee with regard to pretrial issues. Following a staff report on the limited data on the effectiveness of pretrial continuous alcohol monitoring (CAM) systems, the Subcommittee decided there is not enough data at this point to make any recommendations. The Subcommittee would encourage a state-funded pilot program in several smaller counties so that data might be collected for further analysis. The Subcommittee recommended no change to the implied consent shuck system that is currently in place in District Court. The Subcommittee heard a staff report on the NC Commission on the Administration of Law and Justice and the statewide case management database system that is in the works. They made no recommendation as to the prioritization of DWI cases. Although a formal recommendation has not yet been made, the Subcommittee is looking at some ideas that would allow for simplifying the reporting requirements that apply to dismissals and reductions of DWI charges. The Subcommittee is also considering some ideas for establishing a lesser included offense for DWI cases, as well as a very limited expunction option.

Ms. Whitaker continued with the Subcommittee's decisions on sentencing issues. The Subcommittee decided to recommend eliminating good time sentence credits for DWI Levels 1-5, converting gain time credits to earned time credits for Levels 1-5, and authorizing earned time credits for Aggravated Level 1. The Subcommittee decided to recommend eliminating discretionary parole release for DWI Levels 1-5 and imposing post-release supervision for all DWI offenders with sentences longer than

one year. In practice, this will mean Aggravated Level 1 and Level 1 DWIs. The Subcommittee has not yet decided on the length of time for the PRS supervision and revocation periods, but have asked for input from DPS and the Post-Release Supervision and Parole Commission. Staff is in the process of gathering that information to bring back to the Subcommittee. With regard to DWI sentence structure, the Subcommittee decided to recommend eliminating the imposition of a minimum term. The judge would impose one term of imprisonment rather than imposing a minimum and maximum. However, the Subcommittee opted to recommend no change to the statutory sentence ranges for DWI offenses. Likewise, the Subcommittee decided to recommend no change to the law allowing unlimited consecutive DWI sentences.

Ms. Whitaker stated that next steps for the Subcommittee include continuing the discussion of post-release supervision, studying treatment issues, and revisiting outstanding pretrial issues. She then reminded members that the Subcommittee will meet twice this fall: October 5 and November 16.

Judge Ervin asked if the Subcommittee had looked at the impact of eliminating good time on the SMCP, as it would effectively double most sentences. Ms. Whitaker responded that staff was able to develop some preliminary estimates of the impact and that the Subcommittee did consider it when discussing the idea of eliminating good time. The Subcommittee also discussed options for housing the additional offenders. She added that, pursuant to new legislative mandates, the Commission will be undertaking studies of the SMCP's capacity and the most effective setting for housing DWI offenders and those studies may also address this issue.

PRISON REFORM EFFORTS AND INITIATIVES

Chairman Brown recognized Judge Reuben Young, the Chief Deputy Secretary of the Division of Adult Correction and Juvenile Justice and a member of the Sentencing Commission, to provide an update on current prison reforms (*see presentation*). Judge Young told the members that the Department of Public Safety (DPS) had addressed many issues early in 2017 but that it had accelerated the pace following the deaths at Bertie and Pasquotank Correctional Institutions. He explained that DPS established five multi-disciplinary workgroups, created the Prison Reform Advisory Board, and named a Senior Executive Advisor for Prison Reform.

Judge Young then described changes DPS was making in specific areas, beginning with security policies and practices. He stated that the Department has enhanced restrictive housing and disciplinary sanctions against offender who assault staff. Changes include placement in restrictive housing for a minimum of 12 months, forfeiture of time credits awarded to date and ineligibility to earn subsequent credits, suspension of visitation privileges for a minimum of 12 months, and placement on the Interstate Compact Program list for out-of-state housing consideration for a minimum of five years. Luther Moore asked how often the Department currently uses the Interstate Compact Program. Judge Young responded that they do not use it very often. Chairman Brown asked if DPS has an Interstate Compact Program with the federal government. Art Beeler stated that they do.

Ms. Elder asked if the disciplinary sanctions represented options for DPS to use in response to an assault. Judge Young explained that they were options for now, DPS wanted to make sure that none of them violated any existing laws. Mr. Beeler added that this type of response has existed in the federal system for years. Ms. Elder asked if there was a review process for the inmate once the sanctions were imposed. Judge Young responded that there is a process in the existing rules. He added that there is currently a specific penalty in the rules for assault on a staff.

Continuing with security policies and practices, Judge Young explained ways that the Department was utilizing technology to enhance security. Some of the changes include piloting personal body alarm technology at three facilities, providing tasers to supervisors at four facilities, purchasing radios, batons, and pepper spray for staff at all custody levels, and deploying stab resistant shirts. He also announced the creation of a Security Accountability Section to perform unannounced security audits, the modification of offender job and program assignment policies, and efforts to revalidate the classification instrument.

Judge Young highlighted several changes the Department has made to reduce contraband in prison facilities, including providing inmates photocopies of the envelopes their mail came in rather than the original and pursuing technology to address unauthorized cell phone use. Some of these practices came from looking at best-practices in other jurisdictions.

Judge Young stated that there were two other topics that, while not specifically related to prison reform, were extremely important to managing the offender population. The first topic was re-missioning facilities to promote better management of male close custody offenders and to increase flexibility in managing the female offenders. He reviewed the units the Department was converting and the anticipated timeframe. The second topic was offender re-entry. Judge Young explained that the Department has established and is supporting 14 local re-entry councils and that there is interest from 14 additional counties. The problem is that funding is limited, they need their own funding source to be sustainable. He also stated that the Department has identified 12 minimum security prisons to serve as re-entry facilities; six are already operational and six others will be launched by the end of 2018.

Judge Young then reviewed steps the Department had taken to improve training for new and veteran employees and to increase hiring and retention. Luther Moore asked what the minimum requirements were for becoming a Correctional Officer I. Judge Young said that an applicant has to be a United States citizen, at least 20 years old, and have a high school diploma or GED. Mr. Moore asked what the maximum pay was. Mr. Beeler stated approximately \$50,000.

Reiterating the importance of adequate pay, Judge Young provided an overview of the salary increases the General Assembly appropriated for correctional officers as well as the funding for the technology enhancements.

Judge Young concluded with a review of House Bill 969, Enhance Prison Security. This bill creates several new felony offenses to deal with inmate behavior toward correctional officers. He stated that the over-arching goal is to improve safety in the workplace for correctional staff.

Chairman Brown asked what changes DPS had made to Correction Enterprises after the incident at Pasquotank Correctional Institution. Judge Young said that offenders convicted of violent offenses and offenders serving life sentences are no longer eligible for the program. Chairman Brown asked whether the staff to inmate ratio had improved. Judge Young said that it was the same as it was one year ago. He added that the Department is also trying to lower the inmate population at larger facilities. Chairman Brown thanked Judge Young for his presentation.

SPAC LEGISLATIVE STUDIES AND WORKPLAN

Chairman Brown recognized Michelle Hall, staff, to review mandates the General Assembly had tasked the Commission with, in the FY19 session, and to review the FY19 Commission work plan.

Ms. Hall began with an update on the “Appropriate Setting” study (S.L. 2018-5, Section 18B.2.). The study requires the Commission, in consultation with DPS and the NCSA, study the most effective setting to house and provide appropriate treatment services for DWI Aggravated Level 1 and Level One offenders and report findings and recommendations to the General Assembly by February 1, 2019. Ms. Hall reviewed the specific components of the mandate, highlighting the study shall include both housing and appropriate treatment for the population. The study should consider the enumerated options for an appropriate setting – state prisons, county jails, dedicated multicounty jail treatment facilities. Ms. Hall then reviewed the work plan for staff including (but not limited to) data gathering and analysis, determining what qualifies as “effective” in both contexts (i.e. housing, treatment), review options from other states, and solicit input from stakeholders. The Commission would consider the information staff compiled and make any recommendations at its December meeting. Progress to date on the study included stakeholder meetings, investigating available data, scheduling site visits to local jails, and partnering with the NCSA to solicit input from SMCP participants at annual training meetings.

Ms. Katzenelson inquired about the overlap between the work of the DWI Subcommittee and the new General Assembly study. She noted the Commission would have to know the impact of the DWI Subcommittee’s recommendations before completing the study; she indicated she saw a disconnect in the timeline of the due date. Ms. Hall responded that timing would be a challenge, but perhaps the Commission could consider two options – one assuming the legal status quo and the other assuming the recommendations from the DWI Subcommittee were passed into law. Judge Brown added that the DWI Subcommittee is doing a global assessment of DWI sentencing and correctional practices; the new mandate is narrowly tailored.

Judge Ervin inquired about the source of the request. Ms. Hall responded she was not sure where the request originated. Representative Faircloth indicated the Justice and Public Safety Oversight Committee could look at the timing issue and work with the Commission.

Ms. Hall then reviewed the mandate for the Projection and Population Projection Feasibility Study (S.L. 2018-5 Section 18B.3(a) and (b)). The study requires the Commission, with the assistance of the NCSA, to develop five-year projections of available bed space in the SMCP. The first projection is to be reported on February 15, 2019, and then annually following 2019. In addition, the Commission was also tasked with studying the feasibility of developing five-year population projections for the SMCP. The study should consider data needs and potential projection methods. The feasibility study is also due on February 15, 2019. Ms. Hall reminded the Commission the request for the studies had originated with Representative McNeill, and the Commission had written a letter of support for a special provision mandating the study. Ms. Hall outlined the primary questions for the study: what resources are needed for the SMCP (i.e., bed space), and where is the population for the program headed (i.e., population). Broadly, for the capacity component of the study, staff will determine general current capacity of jails in the SMCP, current capacity of the SMCP, and determine the future capacity for the program (e.g., counties planning to build new jails, counties planning to become receiving counties, etc.). For the population projection component of the study, staff will identify data sources and quality, and determine an appropriate methodology based on available data. Ms. Hall noted that progress to date included stakeholder meetings, and preliminary investigation of available data.

Lastly, Ms. Hall reviewed the Commission’s FY19 Work Plan (see Handout), highlighting important dates for Commission and Subcommittee meetings, as well as deadlines for specific projects.

UPDATE ON COMMITTEES WORKING ON LEGISLATIVE INITIATIVES

Chairman Brown recognized Michelle Hall, staff, to provide an update on committees working on legislative initiatives.

Ms. Hall began with the Juvenile Jurisdiction Advisory Committee (JJAC), which was created by the Juvenile Justice Reinvestment Act (JJRA) and tasked with assisting with the implementation of the legislation. She reminded Commissioners of the work the JJAC had already completed, including an interim report submitted to the General Assembly in March of 2018. She outlined budget items that were funded by the General Assembly in the past legislative session and outstanding items that were not funded. She then reviewed the specific work of the JJAC legislative revisions subcommittee and some of the recommendations the subcommittee had made including how to define “motor vehicle” offenses in the context of changing the age of juvenile jurisdiction, and how to handle certain transfer cases for A-G felonies by remanding them back to juvenile court.

Mr. Thompson stated he believed the transfers will bog down juvenile court. Ms. Hall responded that was a possibility, but noted the number of juveniles that commit serious felonies is very small.

Judge Jarrell expressed concern at the recommendation involving reverse waiver and the lack of judicial oversight in the process. He also noted he did not believe many cases would be remanded back to juvenile court.

Mr. Beeler inquired as to whether JJAC had looked at specific programming for 16 and 17-year-olds. Ms. Hall responded that the Juvenile Justice Division had looked at the programming for the older population, but the JJAC itself had not gotten that detailed (beyond funding) in its examination of program needs.

Ms. Hall noted some outstanding issues the JJAC would address in the coming months including detention projections, the “once and adult always an adult” rule, youth gang involvement, and statement implementation of school-justice partnerships.

Next, Ms. Hall switched to an update on the work of the Task Force on Sentencing Reforms for Opioid Drug Convictions. She reviewed recent legislative changes involving opioid offenses, the creation of the Task Force, and the specific mandate for the Task Force. The Task Force is mandated to study and review cases of inmates who are incarcerated solely for convictions of opioid drug offenses that require active sentences; consider how to identify inmates who would be able to successfully reintegrate into society; and develop and consider options for modifying existing statutes. Ms. Hall noted highlighted some considerations underlying the work of the Task Force including: the target population for reform, the exercise of discretion by prosecutors and judges, opioid convictions compared to other drug convictions, and the time and cost to the system to implement changes. She then reviewed some possible recommendations that were being floated by members of or presenters to the Task Force: threshold modifications for trafficking offenses, increased diversion efforts, a sentencing option to divert certain offenders way from drug trafficking minimums, elimination of drug trafficking minimums, and the identification of inmates convicted of opioid trafficking offenses to release and/or resentence. She then asked for the Commission’s feedback.

Ms. Katzenelson noted that if any of the ideas being considered by the Task Force were good ideas, they should apply to all drug offenses, not just opioid-related offenses. She also noted that policies should be consistent with Structured Sentencing.

Due to the time, Ms. Hall asked if Commission members had additional feedback regarding the work of the Task Force, to please be in touch with staff.

2018 NASC CONFERENCE HIGHLIGHTS

Due to time constraints, Chairman Brown postponed this item until the December meeting of the Sentencing Commission.

ADJOURNMENT

Chairman Brown adjourned the meeting at 2:36 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary